INDEX

SUBJECT INDEX

	Page
BRIEF	1-6
Statement as to Florida Act involved	1
Argument	2-5
Conclusion	6

TABLE OF CASES CITED

Acme Freight Lines, Inc. v. Lee ..... Fla. ....., 197 So. 499	2
Bingaman v. Golden Eagle Western Lines, Inc., 297 U. S. 626, 80 L. ed. 928, 56 S. Ct. 624	2, 4
Dixie Greyhound Lines, Inc. v. McCarroll, 101 F (2d) 572	2
Dixie Ohio Express Company v. State Revenue Commission, 306 U. S. 72, 83 L. ed. 495, 59 S. Ct. 435	5
Frost v. Railroad Commission, 271 U. S. 583, 70 L. ed. 1101, 46 S. Ct. 605, 47 A.L.R. 457	2
Hendrick v. Maryland, 235 U. S. 610, 59 L. ed. 385, 35 S. Ct. 140	4
Interstate Transit, Inc. v. Lindsey, 283 U. S. 183, 75 L. ed. 953, 51 S. Ct. 380	3, 4
McCarroll v. Dixie Greyhound Lines, Inc. 309 U. S. 176, 84 L. ed. 441, 60 S. Ct. 504	2

OTHER AUTHORITIES

CHAPTER 14764, Acts of 1931, Laws of Florida	2, 3
CHAPTER 19446, Acts of 1939, Laws of Florida	1, 2
U. S. Constitution, Sec. 8, Art. I	4, 6
U. S. Constitution 14th Amendment	5, 6

IN THE

SUPREME COURT
OF THE
UNITED STATES

October Term
1940

ACME FREIGHT LINES, INC.,
a Florida corporation,
Petitioner

-v-

J. M. LEE, as State Comptroller
of the State of Florida,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Chapter 19446, Acts of 1939, Laws of Florida, which has been unsuccessfully attacked by petitioner in the state courts of Florida and the consideration of which it now attempts to bring here by writ of certiorari, is appended to the petition. It shows in the title that the tax is on the use of fuel only "to propel vehicles of any kind or character on the public highways of the State of Florida." This legislative designation of such use is repeated in Section 1(b) defining the type of fuel; Section 1(f) defining the user; Section 2 imposing the tax and Section 11 setting forth reports to be made by users.

—1—

TAX IMPOSED BY CHAPTER 19446 IS IN COMPENSATION FOR USE OF PUBLIC HIGHWAYS.

As aforestated, the act itself in the title and in four different parts of the body expressly declares that the tax is only upon fuel used to propel vehicles on the public highways of Florida. There would be no reason for such language unless the tax was intended to be in part compensation for the use of the public highways. The lower state court held that such was the only construction to be made of the act and this was affirmed by the Supreme Court of Florida, Acme Freight Lines, Inc. v. Lee, 197 So. 499. This Court has repeatedly held that it should follow the construction of a state statute by the highest court in the state and no reason is shown in the petition why this court should act differently now.

Frost v. Railroad Commission, 271 U. S. 583, 591, 592, 70 L. ed. 1101, 1103, 1104, 46 S. Ct. 605, 47 A.L.R. 457;

Bingaman v. Golden Eagle Western Lines, Inc., 297 U. S. 626, 628, 80 L. ed. 928-931;

Dixie Greyhound Lines, Inc., v. McCarroll 101 F. (2d) 572, 574;

McCarroll v. Dixie Greyhound Lines, Inc., 309 U. S. 176, 84 L. ed. 441, 60 S. Ct. 504.

Chapter 14764, Acts of 1931, Laws of Florida, to which petitioner has referred, does not provide that it shall be the sole method of determining the compensation for the use of the public highways, nor that the compensation

so provided shall be the total compensation for the use of the public highways. Since 1931 when it was passed, motor vehicles have become larger and heavier and better roads are required. Yet taxes under Chapter 14764 are based upon mileage which has not changed. It is therefore proper that additional compensation be required from the users of the public highways.

Petitioner has cited the case of Interstate Transit, Inc. v. Lindsey, infra, but fails to show that the statute involved was a general revenue act dealing with practically all taxes except those relating to highways and the particular section challenged covered occupational licenses on 160 different businesses, including motor bus businesses. The three sentences preceding the first quotation are expressly in point for respondent, as follows (283 U. S. 186):

> "As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears affirmatively, in some way, that it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic. This may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the use (Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 72 L. ed. 551, 48 S. Ct. 230), or by the express allocation of the proceeds of the tax to highway purposes, as in Clark v. Poor, 274 U. S. 554, 71 L. ed. 1199, 47 S. Ct. 702, supra, or otherwise. Where it is shown that the tax is so imposed, it will be sustained unless the taxpayer shows that it bears no reasonable relation to the privilege of using the highways or is discrimina-

tory. Hendrick v. Maryland, 235 U. S. 610, 612, 59 L. ed. 385, 35 S. Ct. 140; Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 250-252, 72 L. ed. 551, 554, 555, 48 S. Ct. 230. Compare Interstate Busses Corp. v. Holyoke Street R. Co. 273 U. S. 45, 51, 71 L. ed. 530, 534, 47 S. Ct. 298."

It is shown both in the act itself and in the opinion of the Supreme Court of Florida that the tax is levied as compensation for the use of the highways and that the proceeds are for the greater part allocated to highway purposes. Petitioner has failed to show that the tax bears no reasonable relation to the privilege of using the highways or that it is discriminatory.

—2—

NO VIOLATION OF ARTICLE I, SECTION 8 U. S. CONSTITUTION.

The cases cited by petitioner are not in point since in no instance did the statute involved show any relation between the tax and the use of the public highways. This court has repeatedly held that a state may impose upon vehicles used exclusively for interstate transportation a fair and reasonable tax as compensation for the privilege of using its highways for that purpose, without violation of the provisions of Section 8, Article I of the United States Constitution.

Hendrick v. Maryland, 235 U. S. 610, 59 L. ed. 385, 35 S. Ct. 140;

Interstate Transit, Inc., v. Lindsey, 283 U. S. 183, 75 L. ed. 953, 51 S. Ct. 380;

Bingaman v. Golden Eagle Western Lines, Inc., 297 U. S. 626, 80 L. ed. 928, 56 S. Ct. 624;

Dixie Ohio Express Company v. State Revenue Commission, 306 U. S. 72, 83 L. ed. 495, 59 S. Ct. 435.

There is no allegation that the total amount of taxes paid or due to be paid by petitioner is not a fair and reasonable compensation for the privilege of using the public highways of Florida.

—3—

NO VIOLATION OF 14TH AMENDMENT TO U. S. CONSTITUTION.

As previously stated herein, the mileage taxes paid by petitioner were not by the act imposing them declared to be the entire compensation for the continued use of the public highways nor could the legislature which passed it bind succeeding legislatures by any such declaration. There is no allegation that the taxes under the mileage act and the Diesel act together are more than a fair contribution to the present cost of constructing and maintaining the public highways.

The illustration given by petitioner of competitors which do not pay mileage taxes or taxes on use of diesel oil shows plainly the difference. One competitor uses its own rails and the other water for transportation, so that in neither case is there any wear and tear of the public highways by vehicles of such competitors. These competitors are not specially exempted by either act but do not pay taxes under such acts because they do not use the public highways.

No showing is therefore made that the petitioner is denied the equal protection of the laws or that there is any discrimination against it.

CONCLUSION

It is respectfully submitted that there is shown no violation of Article I, Section 8 of the United States Constitution nor of the 14th Amendment thereto and that therefore the writ of certiorari should be denied.

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Nathan Cockrell,
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